STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications, Inc.,	**)**	
SBC Delaware Inc.,	**)**	
Ameritech Corporation,	**)**	
Illinois Bell Telephone Company	**)**	
d/b/a Ameritech Illinois, and	**)**	
Ameritech Illinois Metro, Inc.,	**)**	
	)	**Docket 98-0555**
Joint Application for Approval of the	**)**	
Reorganization of Illinois Bell	**)**	
Telephone Company d/b/a Ameritech	**)**	
Illinois, and the Reorganization	**)**	
of Ameritech Illinois Metro, Inc.	**)**	
In Accordance With Section 7-204 Of	**)**	
The Public Utilities Act and for All	**)**	
Other Appropriate Relief	**)**	

McLEODUSA TELECOMMUNICATIONS SERVICES, INC.'S APPLICATION FOR REHEARING

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA" or the "Company"), by its attorney, pursuant to §10-113 of the Public Utilities Act ("Act"), 220 ILCS 5/10-113, and 83 Ill. Adm. Code 200.880, submits this Application for Rehearing and Reconsideration of the Commission's September 23, 1999 order in Docket 98-0555 (the "Order"). McLeodUSA is seeking rehearing of the conclusion in the Order that there was insufficient evidence in the record to address the issue of Ameritech Illinois' special construction charges, and deferring analysis of this issue until a later date.

I. INTRODUCTION

This proceeding was reopened on the Commission's own motion as a result of the determination by Chairman Mathias and Commissioners Kretschmer and Harvill that additional information was needed concerning several statutory issues which must be considered in this proceeding. In letters to the Hearing Examiners, the Chairman stated that he and the aforementioned Commissioners desired additional information concerning several issues including the proposed merger's effect on competition. McLeodUSA intervened in this proceeding for the purpose of addressing certain issues raised by the Commission on reopening.

McLeodUSA is a competitive local exchange carrier ("CLEC") that began providing service in Iowa and Illinois in 1994, two years prior to the passage of the Telecommunications Act. Over 90,000 of McLeodUSA's customers are residential customers, and the remainder are primarily small business. McLeodUSA serves almost 400,000 competitive local exchange lines. (McLeodUSA Ex. 1, p. 3)

In an effort to respond to the Commission's concerns, **McLeodUSA presented the direct testimony of its** Vice President - Law and Regulatory Affairs, David R. Conn. **Mr. Conn described problems McLeodUSA has experienced competing with Ameritech for local service involving, among other things, payment of special construction charges.** In order that effective local competition can develop in Illinois, McLeodUSA argued that Commission approval of the merger should be conditioned on the requirement that Ameritech not be allowed to **impose special construction charges for the provision of unbundled network elements unless: (1) it can be shown that the costs to be**

recovered through such special construction charges are not already being recovered through the TELRIC UNE pricing for the loop, and; (2) Ameritech would charge its end use customer the same special construction charges if it provided the same service to that end use customer.

That recommendation was rejected by the Commission. Specifically, the Order (p. 198) states that:

> **As for the pricing associated with special construction charges related to the provisioning of advanced services, the Commission concludes that there is simply not enough information contained within the record in this proceeding for it to make an equitable and reasoned determination on this issue. [citations excluded] Pricing of these services to CLECs should not be excessive or discriminatory, unfortunately the record in this proceeding does not sufficiently elaborate upon this issue. The Commission notes however that in Section G of this Order, Joint Applicants are being ordered to submit revised TELRICs, LRSICs, shared and common cost studies. The Commission will address the issue of pricing special construction charges when examining those larger pricing issues.**

McLeodUSA seeks rehearing and reconsideration of that conclusion.

II. ARGUMENT

The Order's conclusion in §III.I.2.c (p. 198) concerning Ameritech's recovery of special construction charges is contrary to the Act, not supported by substantial evidence, and arbitrary and unreasonable.

Contrary to the impression left by the Order, substantial evidence was presented by the CLECs with respect to the issue of special construction charges.

Both ACI witness Jo Gentry and McLeodUSA witness Conn testified in direct on reopening to the problems they have encountered with Ameritech with respect to its imposition of special construction charges associated with the provision of unbundled loops. Thus, the Order's conclusion that there was insufficient evidence to address this issue is simply arbitrary.[1]

The evidence presented by McLeodUSA and ACI establishes that special construction charges are a particular problem for CLECs. (See ACI Ex. 1.0, p. 9) Special construction charges are sometimes levied when unbundled loops are ordered from Ameritech. The evidence shows that these non-recurring charges can amount to thousands of dollars depending upon the facility requested. This is true even though Ameritech imposes no charge at all on its end use customer when it provides the same service to the same location. The evidence of record establishes that special construction charges are often assessed when the loop must be conditioned for certain services, or when the customer is served through the use of a digital loop carrier. These circumstances arise in the provision of xDSL services. McLeodUSA witness Conn stated that the imposition of special construction

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[1] **While Ameritech might have *chosen* not to present a substantive response to this testimony, it had full opportunity to do so. Its failure to do so should not be the basis for a Commission conclusion that there was insufficient evidence in the record on this issue.**

charges is a competitive barrier to competition for xDSL services. (McLeodUSA Ex. 1, pp. 4-6)

The evidence further shows that the result of Ameritech's practice of assessing special construction charges is the double recovery of costs. Under the forward-looking TELRIC pricing standards used to determine rates for unbundled loops, loop costs already include the costs to unbundle the loop. (McLeodUSA Ex. 1, pp. 4-6) The witness put forth by Joint Petitioners to address this issue, Mr. Appenzeller, testified that he did not know whether the costs recovered through special construction charges, including those for conditioning the loop for xDSL service, are actually included in TELRIC-based UNE prices. (Tr. 2394-95) Although Mr. Appenzeller's refrain on this point was to ensure that those who cause the costs pay, he conceded that the CLEC does not cause the cost of conditioning the line since conditioning amounts to removing interferers that Ameritech has put on the system. (Id.) Thus, substantial evidence supports the conclusion that special construction charges amount to a windfall for Ameritech and a competitive, discriminatory barrier to CLECs' entry into the market.

Given this evidence, the Commission can reach no other conclusion but that special construction charges are a barrier to competitive entry and have not been cost-justified by Ameritech. Moreover, the Commission must conclude that there is no valid reason for competitive carriers to be charged a special construction charge that Ameritech does not charge its own end users to provide the same loop at the

same location to the same end user. Its failure to consider the substantial evidence is arbitrary and its conclusion to allow Ameritech to double recover costs is contrary to law. These errors must be corrected on rehearing.

In her dissenting opinion, Commissioner Kretschmer accurately pointed out the error of the majority with regard to the issue of special construction charges, and what she believed the Commission should conclude based on the evidence:

> **As an example, when analyzing Special Construction Charges that Ameritech charges competing carriers, I proposed language that would have required Ameritech to prove that the Special Construction Charges imposed on CLECs are not already being recovered in the UNE rates the CLEC pays Ameritech. My language also mandated that there should be parity between the rate Ameritech charges CLECs for Special Construction Charges and the rate it charges its own customers and affiliates for the same service. The dollars involved may not be large. However, the principle is immense because parity and proper recovery are fundamental in a competitive market. To my astonishment, my proposal received no support from my fellow commissioners.**

Dissenting Opinion of Commissioner Kretschmer, p. 21, Docket 98-0555. That error must now be corrected.

III. CONCLUSION

For the reasons set forth herein, McLeodUSA Telecommunications Services, Inc. respectfully requests that the Commission grant this Application for Rehearing, and upon rehearing, issue an order revising the Order dated September 23, 1999, in accordance with this Application.

Respectfully submitted,

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